WP(C) 1941/2004
BEFORE
THE HON'BLE MR JUSTICE B K SHARMA

Heard Mr. G.N. Sahewalla, learned Sr. counsel assisted by Mr. D. Senapati, learned counsel. Also heard Mr. S. Dutta, learned counsel representing the Insurance Company.

The petitioner is a private Company Ltd. incorporated under Companies Act, 1956. It carries on business of manufacturing of detergent which is marketed under the brand name Fena . It has set up a manufacturing plant at Amingaon which is registered as SSI Unit under the District Industries Centre, Kamrup, Guwahati. For the purpose of manufacturing detergent, 'Acid Slurry' is a raw material and for the purpose of storage, the petitioner has constructed a storage tank. It is the case of the petitioner that on 19.03.03, some miscreants entered into the factory premises and committed theft of the chemicals Acid Slurry . In this connection, the petitioner has lodged an FIR on 20.03.03 with Jalukbari P.S. The FIR is reproduced below:

To,
O.C.
Jalukbari P.S.

Respected Sir,
This is to inform you that on 19th March , 2003 early morning, i.e. between 3 AM to 4 PM some person(s) entered into our factory campus in the intention of theft/sabotage and spilled/theft chemical called Acid Slurrys. During the incident there was heavy storm and power cut off. Persons took the advantage of these two and spilled huge amount of chemical over the factory campus.
This is for your information and further action.
For Jericho Detergent Pvt. Ltd.
S/d. Illegible
Authorized signatory
Hemanta Sharma

Upon investigation of the matter, the police submitted final report. It is the case of the petitioner that since the theft occurred in the business premises is governed by two insurance polices, the petitioner is entitled to receive damage compensation as provided in the said two policies. The petitioner has annexed two policies as Annexures-II and III respectively. Annexure-II is the policy relating to burglary insurance and Annexure-III relates to Standard Fire and Special Perils Policy (Material Damage).

While it is the submission of the learned counsel for the insurance company in reference to Clause-V of Anenxure-III Insurance policy and also the report furnished by the surveyor that the incident narrated in the FIR does not come within the purview of both the policies, it is the submission of Mr. G.N. Sahewalla, learned Sr. counsel for the petitioner that there is no indication that the case of the petitioner has been considered under Annexure-III B insurance policy, i.e. burglary insurance.

The claim of the petitioner has been rejected by Annexure-VIII communication dated 05.08.03. It reads as flows:

To,
M/s. Jericho Detergents Pvt. Ltd.
Bye Lane No. 3, Tarun Nagar
G.S. Road, Guwahati-781005

Dear Sir,
RE: Claim No. 321101/102/11/004/2003
Policy No. 321101/102/11075/11/51/2003
Date of Loss. 19/03/2003 Time 3.00 A.M.

A/c. Yourselves

This has reference to the captioned claim we should like to inform you that on the basis of surveyors' report and claim papers submitted the case and nature of loss indicated does not come within the preview of the Fire Policy.

We regret we are not liable under the claim and are closing the file

Thanking you,

Yours faithfully,

Branch Manager

On perusal of the impugned communication, it appears that the case of the petitioner has been rejected on the ground that the incident does not come within the Fire Policy. It is the grievance of the petitioner that since there are two policies, the respondents Insurance Company ought to have considered the case of the petitioner under both the policies. However, it is the submission of the learned Insurance Company that since the case of the petitioner does not come within Annexure-II insurance coverage (Burglary), its case was considered under Annexure-III insurance coverage and upon consideration of the same it has been found that it does not come within the purview of the said insurance policy, i.e. Standard Fire and Special Perils Policy (Material Damage). He submits that the impugned letter has been rightly issued.

Mr. Dutta, learned counsel has produced the relevant file. Upon consultation of the same, there is nothing to show that there was any consideration of the case of the petitioner under Annexure-II insurance coverage, i.e. (burglary). Without expressing any opinion as to whether the incident comes within the purview of Annexure-II insurance policy, I dispose of the writ petition providing that at the respondent Insurance Company shall examine as to whether the case of the petitioner comes within the purview of Annexure- II insurance policy coverage. The impugned letter dated 05.08.03 only speaks consideration of the case of the petitioner under Fire Policy ad its finding of the same does not come within the purview of the said policy. Now, the respondent Insurance Company shall arrive at the finding as to whether the claim of the petitioner comes within the purview of Annexure-II insurance coverage (burglary) or not. Entire exercise shall be carried out on or before 31.04.07.

Writ petition stands disposed of.